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Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Written statement* submitted by France Libertés: Fondation Danielle Mitterand (Special)

The Secretary-General has received the following written statement which is circulated in
accordance with Economic and Social Council resolution 1996/31.

[14 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Violation of the right to social claims: the example of Morocco in the non-self-governing territory of Western Sahara*

The Saharawi people living in the Territories of Western Sahara have long been mobilized to defend its social, economic and political rights not respected by the Moroccan administration.

On numerous occasions the actors of these claims have been qualified by the Moroccan authorities "delinquent", inter alia...

The most significant example was definitely the treatment of the dismantling of Gdeim Izik protest camp in October-November 2010

The devastating social and economic conditions in which live the overwhelming majority of Sahrawis in the city of El Aaiun, and their situation characterized by the absence of freedom of expression, speech and assembly, led the Sahrawis to move out the city, hoping that their voices would thus be heard by the administrations governing the territory. Several attempts to move out of the city had previously failed until a group of unemployed youth, many married and heads of families, decided on October 10, 2010 to conduct this social movement which started with 50 to 70 tents to rapidly increase.

Though the exact number of tents and residents of Gdeim Izik, east of El Aaiun, is not available, the estimates counted nearly 20,000 people spread over more than 6,500 tents. Whilst initially the assembling of the camp tents was slightly disordered due to the increasing number of people, volunteers restructured it. According to information locally gathered and testimonies received a group of volunteers restructured the camp, dividing it into seven sections, each bearing a number. Each youth managed a specific number of tents mounted following a schematic taking into account the ease of access and exit from the tents as well as acceptable distances to avoid risk of fire.

Volunteers worked providing camp residents all possible services, facilitating contacts with the leaders coordinating the action, helping the sick or attending cases requiring medical intervention. All worked in coordination with other stakeholders to maintain internal security, provide essential services and ensure the cleanliness of the section environment as well as that of the whole camp.

The authorities sent a commission of the Ministry of Interior with three governors from central government to analyze the social demands of the people. The Committee held meetings with the camp dialogue committee but the latter never materialized, at least from the perspective of dialogue committee, except in the presence of Minister of the Interior.

Some information report that authorities have always focused on the dismantling of the camp as a prerequisite to any consideration of the demands of the population, while the dialogue committee, on behalf of the camp residents, insisted on the need to begin implementing solutions or at least to obtain guarantees before starting dismantling the camp

Both parties to the dialogue held at least two meetings with the Minister in question, the last one took place on November 4, where an agreement in principle was reached that the Moroccan government committed itself to gradually and step by step meet the claims for housing and work, provided that the implementation of concrete measures of the agreement would begin on Monday, November 8, 2010. The authorities did not provide a copy of the minutes of the agreement to the dialogue committee and the agreement was concluded with a dinner on the beach Foum Eloued.

Nevertheless, after the violent dismantling of the camp on November 8, 2010 by the Moroccan police, the group accused of organizing the camp was arrested and charged with crimes of common law and 24 people were brought before a military court. Overnight, those who were the interlocutors of the Moroccan

authorities became common criminals charged with kidnapping thousands of people and responsible for deaths caused during the attack on the camp.

According to the indictment, which closed the preliminary investigation procedure dated 3 November 2011, the charges against them were:

- to have formed a criminal gang to commit violence against members of the police force during their service, including murder,
- to have participated in violence against members of the police force in the exercise of their functions, including murder,
- of desecrating a corpse.

It should be noted that the first detainee, a human rights defender, Naama Asfari, was arrested on the evening of November 7 at El Aaiun and could not therefore have taken part in the violence of November 8.

The trial began on 1 February 2013, when 21 prisoners had already spent more than two years in custody by court order. The decision to prosecute civilians before military courts violates the fundamental international principles of fair trial.

The accused may appeal the verdicts of the military court only before the Court of Cassation, which decides on issues of procedure, of jurisdiction, abuse of power and law enforcement, but not on substantive issues. On the contrary the Court of Appeal in the civil justice system may review the facts of a case.

Apparently the court accepted the confessions of the accused as evidence without investigating the claims of the defendants that these confessions were the result of torture. They said they were innocent of all charges against them. The authorities should give the accused the right to be retried by a civilian court and placed on bail until valid reasons to justify their detention have been established.

The military court sentenced nine defendants to life imprisonment, 14 to prison terms ranging from 20 to 30 years and two others to 2 years which they already served. All faced a possible death sentence. The authorities charged them all of "association of criminals", most of them of premeditated violence against the police resulting in death, and others of complicity in these crimes. Two defendants met with the additional charge of "defilement or mutilation" of a corpse. The defendants appealed the verdicts.

The written court judgment does not detail the incriminating evidence on which it relied to condemn all the defendants. Since it does not mention any further incriminating evidence, the verdict seems to be based solely on the denied confessions of the defendants to the police. Yet the court rejected the requests made by the defense to investigate the allegations of the defendants, according to whom the police have tortured and forced them to sign the minutes they had not read. Instead, the court accepted the argument of prosecutor, that the defendants had failed to request a medical examination at their first appearance before the judge, and that it had been too long since.

Although the defendants did not request a medical examination when they appeared before the judge, most have clearly declared to have been tortured while in custody. Many of them also claimed that the police had forced them to sign the minutes they had not read, or to put their fingerprints on these documents. The minutes of these hearings reflect these allegations, but nothing in the record shows that a doctor has examined the defendants, or that the court has investigated the matter, in order to assess the credibility of these claims.

During the trial, no prosecution witness could identify one single defendant as being responsible for violent acts. The prosecution presented weapons which were seized by police in Gdeim Izik, but did not provide any scientific or forensic evidence implicating the defendants. The only link between the defendants and the weapons were their disputed confession.

Apart from these disputed confessions of the defendants, the Public Prosecutor has provided very little evidence, if any, that might charge anyone of the defendants with the death of members of the security forces. The written judgment did not mention how the incriminating evidence, videos and photographs presented in court, could involve the defendants individually. These documents show scenes of violence, but do not seem to identify the defendants as the perpetrators.

In view of the foregoing, we are very concerned by the fact that association leaders and human rights defenders could have been condemned for defending social demands

*The Bureau International pour le Respect des Droits de l'Homme au Sahara Occidental, an NGO without consultative status, also shares the views expressed in this statement.